

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult if you find it necessary.

You must not infer from these instructions or from anything I may say or do as indicating that I have an opinion regarding the evidence or what your verdict should be.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath to do so.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all important.

The evidence you are to consider in deciding what the facts are consists of:

1. the sworn testimony of any witness;
2. the exhibits which were received into evidence; and
3. any facts to which the lawyers have agreed

The exhibits will be brought into the jury room. Do not concern yourselves with the fact that they are not consecutively numbered and may have gaps between numbers. This results from numbering conventions that have been adopted, from rulings I have made excluding exhibits and from the fact that lawyers often prepare exhibits which they decide not to introduce into evidence.

In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

(1) Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they say in their closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.

(2) Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.

(3) Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. For example, the witness testifies "I saw

Joe break the glass.” Circumstantial evidence is proof of one or more facts from which you could find another fact. For example, the witness testifies “I saw Joe holding the glass before I left the room. No one else was in it. When I returned, the broken glass was lying at Joe’s feet.” You could find that Joe had broken the glass in either example. You must consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof of a fact does not necessarily depend on the number of witnesses who testify about it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case and any bias or prejudice;
- (5) whether other evidence contradicted the witness's testimony;
- (6) the reasonableness of the witness's testimony in light of all the evidence; and
- (7) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testified about it.

You should decide the case as to each plaintiff and each defendant separately. Unless otherwise stated, the instructions apply to all parties.

Evidence that a witness has given inconsistent testimony may be considered along with all other evidence, in deciding whether or not to believe the witness and how much weight to give to the testimony of the witness.

When a party has the burden of proof on any claim by a preponderance of the evidence, it means you must be persuaded by the evidence that the claim is more probably true than not true.

You should base your decision on all of the evidence, regardless of which party presented it.

You may consider the ability of each party to provide evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence.



Plaintiffs bring their claim under the federal statute, 42 U.S.C. § 1983, which provides that any person or persons who, under color of law, deprives another of any rights, privileges, or immunities secured by the Constitution or laws of the United States shall be liable to the injured party.

In order to prevail on this claim against the officer defendants, the plaintiffs must prove by a preponderance of the evidence that the acts of one or more of the officer defendants deprived the plaintiffs of their particular rights under the United States Constitution as explained in later instructions. A defendant officer deprives a plaintiff of a constitutional right if the officer did an affirmative act or participated in the affirmative act of another officer, and the act violated one of the plaintiffs' particular rights set forth in the next instructions.

In order to establish that the acts of a defendant deprived the plaintiffs of their constitutional rights, the plaintiffs must prove by a preponderance of the evidence that a defendant's acts were so closely related to the deprivation of the plaintiffs' rights as to be the moving force that caused the ultimate injury.

If you find the plaintiffs have proved this, and all the elements they are required to prove under the next instructions, your verdict should be for the plaintiffs. If, on the other hand, the plaintiffs have failed to prove any one or more of these elements, your verdict should be for the defendants.

As previously explained, plaintiffs have the burden to prove that the acts of the defendant officers deprived the plaintiffs of particular rights under the United States Constitution. Under the Fourth Amendment, a person has the right to be free from an unreasonable search of his or her person or residence.

In this case, plaintiffs allege the defendant officers deprived them of their rights under the Fourth Amendment when, after knocking and announcing their presence, the Officers did not wait a reasonable amount of time before forcing entry, and, as part of this unreasonable entry, used a hook to open the metal security gate, damaging the gate and injuring Ms. Fleming. In general, law enforcement officers, when executing a search warrant for a residence, must first knock and announce their presence and then provide residents a reasonable opportunity to open the door. Reasonable force may only be used to gain entry if entry is refused by the residents or exigent circumstances require immediate entry.

To prevail on these claims, the plaintiffs must prove the following elements by a preponderance of the evidence:

1. the defendant officers forcibly entered the plaintiffs' residence;
2. in forcing entry, the defendant officers acted intentionally;

3. the defendant officers did not wait a reasonable amount of time before forcing entry;

4. the manner of entry was unreasonable under the circumstances; and

5. the forcible entry resulted in damages to Mr. Jones' home and to Ms. Fleming;

A person acts "intentionally" when the person acts with a conscious objective to engage in particular conduct. Thus, the plaintiffs must prove the defendant Officers meant to forcibly enter the plaintiffs' residence.

Plaintiffs also allege that the defendant Officers deprived them of their rights under the Fourth Amendment when they held plaintiffs in handcuffs and at gunpoint during the search of the residence, and forced plaintiffs to sign untrue statements.

In general, a law enforcement officer may detain an occupant of a building during a search of the building authorized by a search warrant so long as the officer detains the person in a reasonable manner and does not detain the person any longer than the time it takes to complete the search. In order to prove the detention of plaintiffs was unreasonable, the plaintiffs must prove by a preponderance of the evidence that they were detained in an unreasonable manner or for a unreasonable period of time after the search was completed or both.

Plaintiffs also allege that the defendant officers deprived them of their rights under the Fourth Amendment when they used excessive force in detaining them. In general, the Fourth Amendment prohibits a police officer from using excessive force in making a lawful arrest or detention. On this claim, the plaintiffs must prove by a preponderance of the evidence that the defendant Officers used excessive force against plaintiffs when they held them at gunpoint and in handcuffs and forced them to sign untrue

statements and when Officer McMillan struck plaintiff Fleming's hand with the hook.

In determining whether the defendant Officers detained the plaintiffs unreasonably in this case or used excessive force, consider all of the circumstances known to the defendant Officers on the scene, including:

1. the severity of the suspected crime or other circumstances that led to the search warrant;
2. whether the plaintiffs were the subject of the investigation that led to the search warrant;
3. whether the plaintiffs posed an immediate threat to the safety of the Officers or to others or to the ability of the Officers to conduct the search safely;
4. whether the plaintiffs were actively resisting arrest or attempting to flee;
5. the type and amount of force used, including whether the detention of the plaintiffs was unnecessarily painful, degrading, prolonged, or involved an undue invasion of privacy;
6. whether the detention was for the purpose of preventing an attempt to destroy evidence

7. whether the detention was for the purposes of orderly completion of the search; and
8. the amount of time and any changing circumstances during which the Officers had to determine the type and amount of force that appeared to be necessary.

Under the Fourth Amendment, an officer may only use such force to detain a person as is "objectively reasonable" under the circumstances. In other words, you must judge the reasonableness of a particular use of force from the perspective of a reasonable officer on the scene and not with the 20/20 vision of hindsight.

In order to prevail on their § 1983 claim against Sgt. Ortiz, plaintiffs must prove each of the following elements by a preponderance of the evidence:

1. the acts of Sgt. Ortiz's subordinate officers deprived the plaintiffs of their particular rights under the United States Constitution as explained in the preceding instructions; and
2. Sgt. Ortiz directed his subordinate officers in the acts that deprived the plaintiffs of these rights.

If you find the plaintiffs have proved each of these elements, and if you find that the plaintiffs have proved all the elements they are required to prove under the preceding instructions that deal with the particular rights, your verdict should be for the plaintiffs. If, on the other hand, the plaintiffs have failed to prove any one or more of these elements, your verdict should be for Sgt. Ortiz.



It is the duty of the Court to instruct you about the measure of damages. By instructing you on damages, the Court does not mean to suggest for which party your verdict should be rendered.

If you find for the plaintiffs on their claim, you must determine the plaintiffs' damages. The plaintiffs have the burden of proving damages by a preponderance of the evidence. Damages means the amount of money that will reasonably and fairly compensate the plaintiffs for any injury you find was caused by the defendant Officers. You should consider the following:

1. The nature and extent of the injuries;
2. The physical pain and suffering experienced and which with reasonable probability will be experienced in the future;
3. The reasonable value of necessary medical care, treatment, and services received to the present time;
4. The reasonable value of necessary medical care, treatment, and services which with reasonable probability will be required in the future; and
5. The reasonable value of necessary repairs to any property which was damaged;

It is for you to determine what damages, if any, have been proved.

Your award must be based upon evidence and not upon speculation, guesswork or conjecture.

If you find for the plaintiffs, you may, but are not required to, award punitive damages. The purposes of punitive damages are to punish a defendant and to deter similar acts in the future. Punitive damages may not be awarded to compensate a plaintiff.

The plaintiffs have the burden of proving by a preponderance of the evidence that punitive damages should be awarded, and, if so, the amount of any such damages.

You may award punitive damages only if you find that a defendant's conduct was malicious, oppressive or in reckless disregard of a plaintiff's rights. Conduct is malicious if it is accompanied by ill will, or spite, or if it is for the purpose of injuring another. Conduct is in reckless disregard of a plaintiff's rights if, under the circumstances, it reflects complete indifference to a plaintiff's safety or rights, or if a defendant acts in the face of a perceived risk that his or her actions will violate a plaintiff's rights under federal law. An act or omission is oppressive if a defendant injures or damages or otherwise violates the rights of a plaintiff with unnecessary harshness or severity, such as by the misuse or abuse of authority or power or by the taking advantage of some weakness or disability or misfortune of a plaintiff.

If you find that punitive damages are appropriate, you must use reason in setting the amount. Punitive damages, if any, should be in an amount sufficient to fulfill their purposes but should not reflect bias, prejudice or sympathy toward any party. In considering the amount of any punitive damages, consider the degree of reprehensibility of each defendant's conduct and the relationship of any award of punitive damages to any actual harm inflicted on a plaintiff.

If it becomes necessary during your deliberations to communicate with me, you may send a note through Ms. Yiu, signed by your presiding juror or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; I will communicate with any member of the jury on anything concerning the case only in writing, or here in open court. If you send out a question, I will consult with the parties before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged. Do not disclose any vote count in any note to the court. A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your presiding juror will fill in the form that has been given to you, sign and date it, and advise Ms. Yiu that you are ready to return to the courtroom.

When you begin your deliberations, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court. You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors. Do not hesitate to change your opinion if the discussion persuades you that you should. Do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.